

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Stryker Rejuvenate and ABG II
Hip Implant Products Liability Litigation

MDL No. 13-2441 (DWF/FLN)

This Document Relates to:

Case No. 0:16-cv-01145

CHARLES P. MCCLELLAN, III,

Plaintiff,

vs.

**HOWMEDICA OSTEONICS d/b/a
STRYKER ORTHOPAEDICS,
STRYKER CORP., STRYKER SALES
CORPORATION and STRYKER
IRELAND LIMITED,**

Defendants.

**FIRST AMENDED SHORT FORM
COMPLAINT AND JURY TRIAL
DEMAND**

1. Plaintiff, CHARLES P. MCCLELLAN, III, states and brings this civil action in MDL No. 2441, entitled *In Re: Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation*. Plaintiff is filing this First Amended Short Form Complaint as permitted by Pretrial Order #10 dated January 23, 2014 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, CHARLES P. MCCLELLAN, III, is a resident and citizen of the state of Maine and claims damages as set forth below.

3. Venue of this case is appropriate in the United States District Court,

District of Maine. Plaintiff states that but for the Order permitting directly filing into the District of Minnesota pursuant to Pretrial Order No. 4, Plaintiff would have filed in the United States District Court, District of Maine. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

5. Plaintiff brings this action *[check the applicable designation]*:

 X On behalf of himself;

FACTUAL ALLEGATIONS

Allegations as to Right-Side Implant/Explant Surgery(ies):

6. Plaintiff was implanted with a Rejuvenate Modular hip stem on his/her right hip on or about March 31, 2011, at Waldo County General Hospital, 118 Northport Avenue, Belfast, Maine, by Dr. Owen A. Nelson.

7. Plaintiff had the right hip stem at issue explanted on April 10, 2019, at Waldo County General Hospital, 118 Northport Avenue, Belfast, Maine, by Dr. Owen A. Nelson.

Allegations as to Left-Side Implant/Explant Surgery(ies):

8. Plaintiff was implanted with a Rejuvenate Modular hip stem on his left hip on or about January 31, 2011, at Waldo County General Hospital, 118 Northport Avenue, Belfast, Maine, by Dr. Owen A. Nelson.

9. Plaintiff had the left hip stem at issue explanted on April 15, 2016, at Waldo County General Hospital, 118 Northport Avenue, Belfast, Maine, by Dr. Owen A. Nelson.

ALLEGATIONS AS TO INJURIES

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

<u> X </u>	INJURY TO HERSELF/HIMSELF
<u> </u>	INJURY TO THE PERSON REPRESENTED
<u> </u>	WRONGFUL DEATH
<u> </u>	SURVIVORSHIP ACTION
<u> </u>	ECONOMIC LOSS

11. Plaintiff has suffered injuries as a result of implantation of the Device(s) at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

12. Plaintiff has suffered injuries as a result of the explantation of the Device(s) at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

13. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff.

14. Plaintiff could not have known that the injuries he suffered were as a result of a defect in the Device(s) at issue until after the date the Device was recalled from the market and the Plaintiff(s) came to learn of the recall.

19. In addition, Plaintiff could not have known that he was injured by excessive levels of chromium and cobalt until after the date he had his blood drawn and he was advised of the results of said blood-work and the fact that those blood work abnormalities were attributable to a defect in the Device(s) at issue.

CASE-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

20. The following claims and allegations are asserted by Plaintiff and are herein adopted by reference (check all that are applicable):

- X COUNT I - NEGLIGENCE;
- X COUNT II - NEGLIGENCE PER SE;
- X COUNT III - STRICT PRODUCTS LIABILITY - DEFECTIVE DESIGN;
- X COUNT IV - STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT;
- X COUNT V - STRICT PRODUCTS LIABILITY- FAILURE TO WARN;
- X COUNT VI - BREACH OF EXPRESS WARRANTY;
- X COUNT VII- BREACH OF WARRANTY AS TO MERCHANTABILITY;
- X COUNT VIII - BREACH OF IMPLIED WARRANTIES;
- X COUNT IX - VIOLATION OF MINNESOTA DECEPTIVE ACTS AND PRACTICES, UNFAIR TRADE PRACTICES, CONSUMER PROTECTION, MERCHANDISING PRACTICES AND FALSE ADVERTISING ACTS
- X COUNT X – VIOLATION OF CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW;
- X COUNT XI - NEGLIGENT MISREPRESENTATION
- COUNT XII - LOSS OF CONSORTIUM
- COUNT XIII – UNJUST ENRICHMENT
- COUNT XIV – WRONGFUL DEATH

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For all applicable statutory damages of the state whose laws will govern this action;
3. For an award of attorneys' fees and costs;
4. For prejudgment interest and costs of suit;
5. For restitution and disgorgement of profits; and,
6. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all claims in this action.

Date: September 24, 2019

Respectfully submitted,

/s/Rachel Abrams

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed through the Court's CM/ECF system on September 24, 2019, which shall send notification of such filing to all CM/ECF participants.

/s/Rachel Abrams

Rachel Abrams